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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION (L) NO.25010 OF 2026

Om Vithal Cooperative Housing Society Limited ... Petitioner

Vs.

Trilogy Infra Private Limited ... Respondent

WITH

COMM ARBITRATION PETITION (L) NO.23586 OF 2026

Trilogy Infra Private Limited ... Petitioner

Vs.

Om Vithal Cooperative Housing Society Limited ... Respondent

Mr. Amogh Singh with Ms. Krutisha Pandey, and Mr. Nirav Karia i/by Bhavin Bhatia for the Petitioner in ARBPL/25010/2026 & for the Respondent in CARBPL/23586/2026.

Mr. Mutahhar Khan i/by Mr. Khalid Kazi for the Petitioner in CARBPL/23586/2026 & for the Respondent in ARBPL/25010/2026.

Mr. Vikrant Parshurami, AGP for the State.

Mr. Deepak N. Jadhav, Police Inspector, Borivali Police Station, is present in Court.

CORAM	: AMIT BORKAR, J.
RESERVED ON	: AUGUST 19, 2026.
PRONOUNCED ON	: AUGUST 20, 2026

JUDGMENT:

1. Arbitration Petition (L) No.25010 of 2026 is filed by a Co-operative Housing Society against the developer. The Society seeks various reliefs. One of the main reliefs is a declaration that, because of the termination notice issued by the Society, the Development Agreement executed and registered with the developer has come to an end. The Society seeks an injunction to prevent the developer from disturbing its possession of the suit property. The Society further seeks to restrain the developer from interfering with its right to redevelop the property in the manner it may choose. On the other hand, the developer has filed Commercial Arbitration Petition (L) No.23586 of 2026. The developer seeks a stay to the termination notice issued by the Petitioner Society. It seeks to restrain the Society from acting upon or giving effect to the termination notice and from dispossessing the developer from the subject property.

2. The facts and circumstances which led to filing of the present petitions, as stated by the Co-operative Housing Society, are as follows. The Petitioner is a Co-operative Housing Society registered under the Maharashtra Co-operative Societies Act, 1960. The Society claims to be in possession of and entitled to the land bearing Final Plot No.275, Sub Plot No.30 of Town Planning Scheme No.III, along with the building known as "Vithal Apartments", situated at Kasturi Park, Shimpoli Road, Borivali (West), Mumbai 400092. This property is referred to as the "Subject Property". The Respondent is a company carrying on the business of redevelopment and construction.

3. On 31 January 2015, the Petitioner Society had initially appointed M/s. JKD Enterprises as the developer for redevelopment of the Subject Property. A Development Agreement and Power of Attorney were executed in favour of the said developer. According to the Society, the earlier developer later abandoned the project and committed repeated defaults. Therefore, the Society terminated the earlier development arrangement on 23 January 2023. Thereafter, Consent Terms were executed before this Court. However, according to the Society, the earlier developer again committed defaults. As a result, possession of the Subject Property was taken through the Court Receiver and thereafter restored to the Petitioner Society. Thereafter, between 13 June 2023 and 11 December 2023, the Petitioner Society started a fresh process for appointment of another developer. After following the tender process and considering different offers, the Society appointed the present Respondent as the developer and accepted its revised proposal for redevelopment of the Subject Property. The parties thereafter executed a Development Agreement dated 25 November 2023 and a Power of Attorney dated 11 December 2023. Under these documents, redevelopment rights were given to the Respondent. The Respondent had represented that it had sufficient financial capacity, technical knowledge and readiness to complete the redevelopment project within the time agreed between the parties.

4. Under the Development Agreement, the Respondent was required, amongst other things, to obtain all necessary approvals and revised sanctioned plans within the agreed time. The

Respondent was required to execute Permanent Alternate Accommodation Agreements, maintain transparency regarding the progress of the project, regularly pay rent to the members and complete the redevelopment work within the contractual period. According to the Society, in spite of repeated assurances and opportunities, the Respondent did not perform these obligations. It failed to obtain the necessary approvals, failed to execute the Permanent Alternate Accommodation Agreements and failed to show that it had the necessary financial readiness for carrying out the redevelopment project.

5. On 15 April 2025, according to the Society, instead of removing the defaults, the Respondent raised disputes which, according to the Society, were not connected with the obligations of the Respondent under the Development Agreement. The Respondent sought substantial extension of time. It attempted to introduce revised commercial arrangements which, according to the Society, were not part of the original Development Agreement. The Society further states that even the revised timelines and schedules proposed by the Respondent were repeatedly not followed.

6. According to the Society, from January 2026 onwards, the Respondent continued to default in payment of monthly rent and rehabilitation compensation payable to the members of the Society. It is the case of the Society that no meaningful redevelopment work was carried out at the site. In spite of repeated reminders, meetings and communications, the redevelopment project remained at a standstill. The Society, therefore, issued a detailed

Cure Notice calling upon the Respondent to remove and cure the various breaches and defaults under the Development Agreement. The Respondent was asked to provide a clear and workable plan for completion of the redevelopment project. According to the Society, the Respondent did not cure the defaults mentioned in the notice. It only denied the allegations without providing details of financial closure, proper timelines or material showing actual performance of its obligations.

7. Between 2 May 2026 and 18 May 2026, the Respondent purported to invoke arbitration and sought to restrain the Society from taking further steps. However, according to the Society, the Respondent continued to remain in breach of its contractual obligations and did not cure the defaults. Therefore, according to the Society, because of the continued and serious breaches, long delay, non-payment of rent, failure to obtain approvals and complete lack of progress in redevelopment, the Society terminated the Development Agreement, Power of Attorney and all other documents connected with the development arrangement by a notice dated 18 May 2026. From 22 May 2026 and thereafter, the Society informed the concerned authorities about the termination. The Society issued public notices informing the public about cancellation and termination of the development arrangement with the Respondent. The Respondent disputed the termination. According to the Society, even after the termination, the Respondent continued to claim rights under the documents which, according to the Society, had been terminated, despite the Respondent having failed to perform its obligations under the

Development Agreement.

8. The Society apprehends that, even after termination of the Development Agreement and Power of Attorney, the Respondent may create third-party rights in respect of the Subject Property, create encumbrances over it, misuse the development documents or otherwise prevent the Society from proceeding with redevelopment. The Society states that it intends to undertake redevelopment either by self-development or by appointing a new developer of its choice. According to the Society, there is, therefore, a need to protect the Subject Property and its rights pending resolution of the disputes between the parties. On this basis, the Petitioner Society has filed the present Arbitration Petition under Section 9 of the Arbitration and Conciliation Act, 1996.

9. Mr. Singh, learned Advocate appearing for the Petitioner Society, submitted that under the Development Agreement entered into between the Society and the developer, the developer was required to complete the redevelopment of the Society within a period of 18 months, with an additional grace period of 6 months. According to him, the developer was required to obtain the Occupation Certificate from the concerned authorities. He invited my attention to Clause 8.3 of the Development Agreement and submitted that the developer was required to obtain all necessary approvals within six months from the date of the Development Agreement. Referring to the definition of "Occupation Certificate" in the Development Agreement, he submitted that the expression means a full Occupation Certificate issued by the Municipal

Corporation in respect of the newly constructed buildings.

10. Mr. Singh further invited my attention to Clause 10.10 of the Development Agreement. He submitted that the said clause required the developer to strictly provide a construction schedule in the form of a bar chart so that the work could be completed successfully within the agreed period. According to him, the developer failed to provide such construction schedule. He further submitted that since November 2025, the developer had not paid rent to the members of the Society as required under the Development Agreement. He submitted that not even a single RCC slab had been completed by the developer at the site.

11. Mr. Singh then referred to the letter dated 6 December 2025, by which the Society granted the developer an extension of 24 months for completion of the redevelopment project. He submitted that all the terms and conditions of the Development Agreement dated 25 November 2023 were to remain unchanged. Under the said letter, the developer was required to increase the monthly rent payable to the members by 10% from January 2026 onwards. The developer was required to ensure regular and timely payment of rent to all the members. He submitted that, thereafter, on 13 January 2026, the developer sent a communication proposing certain terms as part of a compromise arrangement. According to the Petitioner, the said communication required the Society to execute a new Supplementary Development Agreement. He submitted that the Society, by its communication dated 16 January 2026, informed the developer that the members had jointly decided not to grant permission for obtaining a part Occupation

Certificate. The Society informed the developer that its proposal was not in accordance with the sanction letter and that the developer was misleading the Society. According to Mr. Singh, the Society stated that because of these circumstances, its members were losing trust and confidence in the developer. It was pointed out that the developer had failed to show progress according to the timeline provided under the Development Agreement and had not obtained the full Occupation Certificate for the project till that date.

12. Mr. Singh further referred to the communication dated 30 January 2026 issued by the developer, by which three options were placed before the Society. The first option was that the Society should accept the terms and conditions mentioned in the developer's earlier letter and allow the developer to complete the project. The second option was that the Society could enter into a legal dispute with the developer, which, according to the developer, would result in further delay in completion of the project. The third option was that, if the Society wanted the developer to leave the project, the Society would be required to pay an amount of Rs.10 crore along with interest at the rate of 18%. According to Mr. Singh, the said letter required the Society to give its reply within seven days. It was stated that if no reply was received within that period, it would be presumed that the Society had accepted the terms and conditions contained in the developer's letter dated 13 January 2026.

13. Mr. Singh submitted that the Society, therefore, issued a notice dated 16 March 2026 terminating the Development

Agreement. According to him, thereafter, the developer, by its communication dated 8 April 2026, stated in paragraph 12 that if the Society was not interested in completion of the project, the developer would be constrained to exercise its right to exit from the project. The developer further stated that, upon such exit, the Society would be required to pay Rs.10 crore and an additional amount of Rs.10 crore towards damages.

14. In support of his submissions, Mr. Singh relied upon the decisions of this Court in *Bank of Baroda Employees Mayuresh CHS Limited vs. Kamla Homes Lifestyles Private Limited,* Interim Application No.916 of 2024 in Suit No.94 of 2024, decided on 13 August 2024; *Yogeeta CHS Limited vs. Kamla Homes & Lifestyles Pvt. Ltd. & Others,* Commercial Arbitration Petition (L) No.10780 of 2023, decided on 5 June 2023 and 22 June 2023; *Punjab National Bank Workers CHS Ltd. vs. Meeti Developers Pvt. Ltd.,* 2021 SCC OnLine Bom 5280; *Rajawadi Arunodaya CHSL vs. Value Projects Pvt. Ltd.,* 2021 SCC OnLine Bom 95723; *Mayurpankh CHSL vs. Surya Landmarks Developers Pvt. Ltd.,* Interim Application (L) No.15831 of 2021 in Commercial Suit No.182 of 2021, decided on 28 September 2021; *Swashray CHSL & Ors. vs. Shanti Enterprises,* Commercial Arbitration Petition (L) No.10432 of 2023 with 15203 of 2023, decided on 3 November 2023; *The Jal Ratan Deep CHSL vs. Kumar Builders Mumbai Realty Pvt. Ltd.,* 2015 SCC OnLine Bom 5928; *Saurabhakti Good P. Ltd. vs. GS Constro & Infra P. Ltd.,* Arbitration Petition (L) No.13088 of 2022 with 31470 of 2022; *Goverdhangiri CHSL vs. Bharat Infrastructure and Engineering Limited,* Arbitration Petition (L) No.3237 of 2020, decided on 2 November 2020; *and Taksha Spaces Pvt. Ltd. vs. Goverdhangiri CHSL & Another,* Appeal (L) No.7685 of 2020 in Arbitration Petition No.90 of 2021, decided on 1 July 2021.

15. On the other hand, Mr. Khan, learned Advocate appearing for the developer, submitted that on 16 April 2025, the MahaRERA authorities had granted a stay on the basis of a complaint made by the earlier developer. According to him, this had affected the progress of the redevelopment project. He further submitted that under the Development Agreement, the existing parking area was required to be demolished and a multi-storeyed parking building was required to be constructed. According to him, this work required considerable time. He submitted that, on an application made by the developer, the Municipal Corporation granted permission for construction on 1 February 2024. Thereafter, on 11 August 2024, the developer paid the necessary premium. According to Mr. Khan, from September 2024 till March 2025, construction work relating to the parking building was carried out.

16. Mr. Khan invited my attention to the communication dated 19 November 2025 issued by the developer to the Society, requesting extension of the redevelopment timeline. He submitted that, thereafter, by a communication dated 6 December 2025, the Society granted an extension of 24 months for completion of the redevelopment project. He further submitted that the developer is ready to deposit the entire outstanding corpus amount and additional funds in a joint Escrow Account. Alternatively, the developer is ready to pay the arrears of rent due to the members. However, according to him, this is subject to the Society agreeing to allow the developer to continue with the redevelopment project.

17. Mr. Khan submitted that the stay granted by MahaRERA was lifted in December 2025. Immediately thereafter, according to him, the developer approached various lenders and finalised discussions with investors for arranging funds for the project. He further submitted that, under the revised schedule dated 26 November 2025, the Society had accepted the developer's explanation regarding the delay in completion of the project.

18. Mr. Khan invited my attention to the reliefs sought by the Society in its petition. He submitted that prayer clause (a), by which a declaration is sought, is in the nature of final relief and cannot ordinarily be granted in a petition under Section 9 of the Arbitration and Conciliation Act, 1996. In so far as prayer clause (b) is concerned, he submitted that the Respondent developer is in possession of the Subject Property. According to him, the remaining reliefs claimed by the Society are beyond the scope of Section 9. He, therefore, submitted that the petition filed by the Society is liable to be dismissed. According to him, the developer is entitled to the interim reliefs sought in the petition filed by it.

REASONS AND ANALYSIS:

19. I have considered the rival submissions made by the learned Advocates appearing for the Society and the developer. I have gone through the Development Agreement dated 25 November 2023, the correspondence exchanged between the parties thereafter, the Termination Notice dated 18 May 2026 and the interim reliefs prayed in both the petitions. At this stage, this Court is not required to finally decide all the contractual disputes between the parties. Those disputes are required to be decided in arbitration. The limited question before this Court is whether, on the material available, redevelopment project should continue with the present developer till completion of arbitration proceedings, or whether the Society should be permitted to take the redevelopment further, while protecting rights and claims of the developer.

20. The basic obligations under the Development Agreement are not disputed. According to the Society, the developer was required to complete redevelopment within 18 months, with further grace period of 6 months. Under Clause 8.3, the developer was required to obtain full approvals within six months from the date of Development Agreement. The Agreement contemplated obtaining full Occupation Certificate. The Society has relied upon definition of "Occupation Certificate" in the Agreement and has contended that it means full Occupation Certificate issued by Municipal Corporation in respect of the newly constructed building. The Society has relied upon Clause 10.10 of the Development Agreement. According to the Society, the developer was required to give a proper construction schedule in form of a bar chart, so that the project could be completed within the stipulated time. It is the case of the Society that no proper schedule was provided. The Society has further alleged that rent was not paid to its members from November 2025. It is contended that there was no substantial progress in construction work. According to the Society, even one RCC slab was not laid by the developer.

21. On the other side, the developer has tried to explain the delay. Mr. Khan submitted that on 16 April 2025, MahaRERA had granted a stay because of a complaint made by the earlier developer. It is submitted that, under the Development Agreement, the existing parking area was required to be demolished and a multi-storeyed parking building was required to be constructed. According to the developer, this work required considerable time. The developer has further pointed out that the Municipal Corporation granted permission for construction on 1 February 2024. The necessary premium was thereafter paid on 11 August 2024. It is submitted that, from September 2024 till March 2025, work relating to the parking building was carried out.

22. At this stage, the explanation given by the developer cannot be ignored. A stay granted by a statutory authority can affect the progress of a redevelopment project. Similarly, demolition work, construction of parking structure and obtaining statutory permissions can take some time. Therefore, merely because there is delay in the project, it cannot mean that the whole delay is only because of the developer. The explanation given by the developer regarding these circumstances requires consideration. However, the matter cannot be decided only by seeing whether there was some reason for delay during a particular period. The overall conduct of both parties and the actual condition of the redevelopment project are required to be considered. The material placed before the Court shows that the developer had sought extension of time for completion of the redevelopment project. By communication dated 6 December 2025, the Society granted an extension of 24 months for completion of redevelopment. Significantly, according to the Society, this extension was granted while keeping all the terms and conditions of the Development Agreement dated 25 November 2023 unchanged. The said communication provided for 10% increase in monthly rent payable to the members from January 2026. The developer was required to ensure timely payment of rent to the members. The Society did not immediately terminate the Development Agreement because of the earlier delay. Instead, it granted further time to the developer. Thus, prima facie, the Society gave the developer one more opportunity to continue and complete the redevelopment project. However, the Society contends that even after such extension was granted, the developer did not perform its obligations. The Society has relied upon its communication dated 16 January 2026, wherein it expressed that the members were losing trust and confidence in the developer. According to the Society, the developer failed to show progress as per the agreed timeline and failed to obtain full Occupation Certificate. The communication dated 30 January 2026 issued by the developer requires consideration. According to the Society, the developer gave three options to the Society. The first option was to accept the terms proposed by the developer and permit the developer to complete the project. The second option was to enter into legal proceedings, which according to the developer would result in further delay of the project. The third option was that, if the Society wanted the developer to leave the project, the Society would have to pay Rs.10 crore together with interest at the rate of 18%. The developer was entitled to place its stand before the Society and to protect its financial interest. However, from the communication as placed before the Court, it appears that continuation of redevelopment project was being connected with acceptance of fresh terms proposed by the developer. The Society has contended that the developer was requiring execution of a Supplementary Development Agreement containing terms and arrangements which were not part of the original Development Agreement. At this stage, it is not necessary to finally decide whether the proposed additional terms were justified or otherwise. That issue can be examined in arbitration. However, one fact remains that the Society had granted extension on 6 December 2025 and, according to its case, the original terms and conditions of the Development Agreement were kept unchanged. Thereafter, disputes arose between the parties regarding fresh conditions and the manner in which the project was to be continued.

23. The Society has alleged that rent was not paid to its members from November 2025. The developer has submitted that it is ready to clear the arrears of rent. It has stated that it is prepared to deposit the outstanding corpus and additional funds in a joint Escrow Account, provided the Society agrees to allow the developer to continue with the redevelopment project. The offer made by the developer shows, at least at this stage, its willingness to address some financial issues. However, the question is whether such an offer can remove the effect of earlier defaults and whether only because of such offer, the Society can be required to continue with the same developer for an indefinite period. The answer to this question cannot be in the affirmative. Payment of rent to members who have vacated their premises is not a small matter in a redevelopment project. Once the members vacate their existing flats, they depend upon the arrangements made under the Development Agreement for alternate accommodation and other monetary benefits. If rent is not paid in time, the members may face serious difficulties.

24. The developer has stated that after the MahaRERA stay was lifted in December 2025, it approached lenders and investors for funding of the project. This submission cannot be rejected without consideration. However, at the same time, the redevelopment project had commenced much earlier. The developer had undertaken responsibility of carrying out and completing redevelopment. Therefore, the subsequent statement that lenders and investors were being approached becomes relevant while considering whether necessary financial arrangements for completion of the project were available with the developer.

25. The developer has relied upon the fact that the Society granted extension of 24 months. It has contended that the revised schedule dated 26 November 2025 was accepted by the Society. This submission may have relevance in arbitral proceedings while deciding whether the Society had waived any earlier breach or whether the original time schedule was modified by mutual consent. However, grant of extension cannot mean that the developer got an unrestricted right to delay the project without any further consequence. Extension is granted to enable a party to perform its obligations within the extended period. The developer was still expected to show reasonable progress and comply with its continuing obligations, particularly regarding payment of rent and carrying out redevelopment work.

26. The Society thereafter issued the Termination Notice dated 18 May 2026. The developer has challenged the validity of termination. The developer seeks stay of the Termination Notice and seeks a declaration that the Development Agreement continues to remain valid and binding between the parties.

27. The Society has sought, amongst other reliefs, a declaration that the Development Agreement and Power of Attorney stand terminated, cancelled and revoked. The developer has submitted that such declaration is in the nature of final relief and should not be granted at the interim stage. The final validity of the termination is an issue which is required to be decided in arbitration. While exercising powers under Section 9, this Court cannot finally decide all disputes arising from the Termination Notice in the same manner in which the Arbitral Tribunal would decide merits of the entire dispute. Therefore, the prayer of the Society seeking final declaration regarding validity of termination cannot be granted in a manner which finally concludes the dispute between the parties. Similarly, the developer cannot obtain a final declaration at this stage that the termination is illegal and that the Development Agreement continues to subsist for all purposes.

28. The interim question before this Court is different. The Court has to make a prima facie assessment on the basis of material available and decide what interim arrangement is necessary for protecting the rights of the parties and for ensuring that redevelopment project does not remain stalled for an indefinite period.

29. The decision in *Pioneer Constructions vs. Sahakarnagar Co-operative Housing Society Ltd.,* 2026 SCC OnLine Bom 2711, explains the approach required in disputes concerning redevelopment of a housing society. In paragraph 33, after referring to the decision of the Division Bench in *Huges Real Estate Developers LLP Commercial Appeal No. 45 of 2025 decided on 19-8-2025*, this Court observed:

> "Therefore, while considering the issue of grant of temporary injunction to restrain a housing society from proceeding ahead with reconstruction of its building, this vital aspect needs to be borne in mind."

30. The reason for adopting such approach is stated in paragraph 33 of the said judgment, where it is observed:

> "the rights of a developer to earn profits through redevelopment contracts would always remain subservient to the rights of the society to have its building reconstructed."

31. The above observations show that the interest of the developer in a redevelopment project is connected with its investment and profits which it may earn from the project. The Society and its members, on the other hand, enter into redevelopment so that they can get reconstructed and habitable homes. Therefore, while considering interim relief, the Court is required to see what actual consequence may follow if the redevelopment project is stopped.

32. Paragraph 33 of *Pioneer Constructions* further states:

> "When rights of residents of dilapidated buildings to reside in safe houses is pitted against the rights of the developer to earn profits through redevelopment contracts, the latter must yield to the former atleast when it comes to consideration of grant of temporary injunction."

33. At the same time, this principle does not mean that every termination made by the Society has to be accepted by the Court. The same paragraph holds the need for making a prima facie inquiry regarding breach of the Development Agreement. It states:

> "Therefore prima facie inquiry in such cases would ordinarily revolve around the issue as to who is guilty of breach of Development agreement so as to put the guilty party to terms."

34. Therefore, the Court is not expected to mechanically prefer the Society only because the Society consists of members waiting for redevelopment. The conduct of the Society is required to be examined. If the Society has illegally terminated the Development Agreement even though the developer was ready and capable of performing its obligations, appropriate conditions may be imposed upon the Society for protecting the developer.

35. The further observations in paragraph 33 are relevant. The Court has stated:

> "Thus, if the society members are prima facie found to have terminated the Development agreement in an illegal manner, the Court can put the society to terms before allowing the redevelopment process to progress further through another developer."

36. Therefore, the main question in the present matter is whether the material placed before this Court shows, at least prima facie, that the Society terminated the Development Agreement without sufficient reason, or whether the conduct of the developer had reached such stage that the Society could reasonably lose confidence and decide to proceed with some other arrangement. On the material available, it cannot be said that the termination is and finally proved to be valid. The explanation given by the developer regarding MahaRERA stay, construction of parking structure, statutory permissions and financial arrangements cannot be treated as irrelevant. These matters may have important bearing when the dispute is finally decided in arbitration. At the same time, the other position is clear. The material available does not show such substantial progress in the redevelopment project that the Society can be compelled to continue with the present developer until completion of arbitration proceedings.

37. The Society has alleged non-payment of rent, failure to achieve sufficient construction progress and failure to demonstrate financial closure. The developer's own submissions show that, even after the dispute arose, it was approaching lenders and trying to finalise investors. It has offered to clear financial dues subject to the Society agreeing to continuation of the project. Prima facie there appears to be a serious dispute regarding readiness and capacity of the developer to complete the project within a definite and workable time schedule. The developer has stated that it is ready to perform its obligations. However, the material before the

Court does not provide sufficient basis to conclude that the project can now be completed by the present developer within a certain and reliable period. This aspect becomes more important because the Society had granted extension of 24 months. According to the Society, this extension was granted to give the developer one further opportunity to complete the project. However, the subsequent correspondence shows that disputes continued and the relationship between the Society and the developer deteriorated.

38. The decision in Pioneer Constructions refers to *Ison Builders LLP. Commercial Arbitration Petition (L) No. 36533 of 2025 decided on 23-1-2026* Paragraph 37 of the quoted judgment observes:

> “Petitioner's interest in the project are limited to earning profits. Petitioner can claim damages against the Society and members if it can prove that the termination is invalid. However, whether the Petitioner can further stall the process of redevelopment till adjudication of its claims in respect of the termination? The answer to the question appears, to my mind, to be in the negative.”

39. The principle coming from these observations is that the remedy available to the developer in arbitration for claiming damages or compensation must be considered while deciding whether the redevelopment project should be stopped. The developer may establish that the termination was wrongful. If it succeeds, its monetary claims can be adjudicated and appropriate relief can be granted by the Arbitral Tribunal. In contrast, if redevelopment project is not allowed to proceed till arbitration is finally concluded, the members may remain without any certainty as to when redevelopment will be completed. This is not merely a temporary commercial inconvenience. The members have vacated their homes and may be dependent upon rent or alternate accommodation. Delay in redevelopment therefore affects their living arrangements.

40. The Court in *Pioneer Constructions* has further referred to the decision in *Swashray Co-operative Society Housing Society Limited* v. *Shanti Enterprises CARBP (L) 10432 of 2023 decided on 3-11-2023* and quoted paragraph 32 thereof. The following observations are relevant:

> "The Petitioner-Society is not expected to be at the mercy of the Respondent-Developer. The Petitioner-Society cannot be shackled with a Development agreement in which the Respondent-Developer indulges in repeated defaults, without any hope of the redevelopment project actually being completed."

41. This principle would apply where the material shows repeated defaults and where there is no reasonable confidence that the project will proceed within a workable period. Whether such circumstances are finally established is a matter for arbitration. At the interim stage, the Court is required to examine only whether the Society has made out a sufficient prima facie case for protecting and taking forward the redevelopment process.

42. In the present case, the developer has relied upon the stay granted by MahaRERA and the requirement of carrying out parking-related work. These circumstances may explain part of the delay. However, they do not answer the Society's allegation regarding subsequent non-payment of rent and absence of satisfactory progress even after grant of extension. The developer has offered to deposit the outstanding corpus and additional funds in an Escrow Account or to pay arrears of rent. Such offer may protect immediate financial interest of members to some extent. However, payment of arrears does not answer the larger question regarding future completion of redevelopment project. The Court cannot proceed only on the basis of an assurance that the developer will now arrange funds and complete the project. There should be sufficient material to show that such completion is realistically possible within a definite period. At present, the dispute regarding funding shows that this aspect remains uncertain.

43. The developer has sought an injunction restraining the Society from appointing another developer. If such relief is granted in absolute terms, the result would be that the Society would be prevented from taking the redevelopment forward until the dispute regarding termination is finally decided in arbitration. This is precisely the consequence which the judgments referred above require the Court to consider. In paragraph 35 of *Pioneer Constructions*, this Court observed:

> "If the interim measures are granted in Petitioner's favour, the same would result in redevelopment project being delayed indefinitely."

44. The same paragraph further states:

> "On the other hand, if interim measures are refused, the Petitioner may only lose opportunity of earning profits in the

> project. In case, Petitioner succeeds in its claims, it can be adequately compensated while passing the arbitral Award."

45. These observations do not mean that in every redevelopment dispute a developer can always be compensated only by damages. Each matter will depend upon its own facts. If construction is complete, or if the developer has invested substantial amounts and is ready and financially capable of completing the project, different considerations may arise. The present matter has to be decided on the basis of its own material.

46. In the present case, the Society has placed material regarding long disputes, request for extension, subsequent disagreement regarding additional conditions, allegation of non-payment of rent and lack of substantial progress. The developer has given explanations and has stated that it is now ready to arrange funding and clear outstanding dues. On an overall prima facie consideration, the apprehension of the Society that redevelopment project may continue to remain uncertain cannot be said to be without any basis.

47. The balance of convenience is therefore required to be considered. If the Society is prevented from proceeding further, the entire redevelopment project may remain dependent upon the outcome of arbitration. Arbitration, even if conducted expeditiously, may require some time. Further proceedings may arise thereafter. During this period, the Society and its members cannot be expected to remain indefinitely in uncertainty. On the other hand, if the Society is permitted to proceed with redevelopment through another developer or by any other permissible mode, the developer's claim that termination was wrongful does not disappear. The Arbitral Tribunal can determine legality of the termination and can quantify damages, compensation or any other monetary relief, if the developer succeeds. Therefore, the balance of convenience does not favour granting an injunction restraining the Society from taking further steps for redevelopment. On the present facts, prejudice likely to be caused by keeping the redevelopment project stopped appears to be greater than the prejudice which may be caused to the developer by allowing the project to proceed, while preserving and protecting its financial and legal claims.

48. At the same time, the Society's prayer seeking final declaration that the Development Agreement stands validly terminated cannot be granted as final adjudication under Section 9. The validity and legal consequences of the Termination Notice dated 18 May 2026 must remain open for final decision in arbitration. The same principle applies to the prayer made by the developer seeking final declaration that the Termination Notice is illegal, null and void and that the Development Agreement continues to remain fully operative. Such final adjudication cannot be made at this interim stage. Therefore, the proper course would be to keep the dispute regarding validity of termination open for the Arbitral Tribunal, while making such interim arrangement which does not unnecessarily stop redevelopment of the Subject Property.

49. So far as possession is concerned, the Society claims that it is in possession of the Subject Property. The developer claims possession and control over the site. The pleadings show that the property belongs to the Society and the developer claims rights under the Development Agreement and Power of Attorney for the limited purpose of carrying out redevelopment. The developer's right to enter upon the property and carry out construction arises from the development arrangement between the parties. Since the Society has issued the Termination Notice and serious disputes have arisen, it would not be proper at this stage to allow either party to create a situation by carrying out further construction or creating third-party rights without appropriate safeguards. However, once the Society is permitted to proceed with redevelopment through another lawful arrangement, the developer cannot be permitted to use the pending arbitration proceedings as a reason for obstructing future redevelopment activity. At the same time, the Society must preserve all relevant records and materials and maintain proper accounts of further redevelopment.

50. The developer has sought a direction requiring the Society to deposit Rs.10 crore as security towards the amount allegedly invested by the developer. At present, there is no adjudication regarding the actual amount invested by the developer, the manner in which such amount was utilised, or the extent to which the developer may be entitled to recover any amount. Therefore, a direction requiring the Society to deposit Rs.10 crore merely on the basis of assertion made by the developer would not be justified at this stage. However, the claim of the developer is required to be preserved. Before entering into a fresh redevelopment arrangement, the Society can be required to maintain complete accounts and records relating to the project and to disclose the relevant terms of any fresh arrangement before the Arbitral Tribunal, if required. Such measures can protect the claim of the developer without bringing the redevelopment project to a complete halt.

51. The Society has sought delivery and deposit of original documents, including the Development Agreement, Power of Attorney, approvals, sanctions, receipts and professional NOCs. These documents may be required both for continuation of redevelopment and for adjudication of disputes in arbitration. At the same time, it is necessary that such documents are preserved and are not withheld, destroyed or misused by either party. Therefore, the developer cannot be permitted to create any third-party rights on the basis of the Development Agreement dated 25 November 2023 or the Power of Attorney. The developer shall not alienate, transfer, mortgage or otherwise encumber the Subject Property or any part thereof. The original documents and project records are required to be preserved and made available as may be necessary for continuation of redevelopment and for the arbitral proceedings.

52. The permission sought by the Society to proceed with redevelopment is required to be understood only as an interim arrangement. Such permission shall not amount to a final finding that the Termination Notice is valid. Similarly, refusal of interim relief sought by the developer shall not amount to a final finding that the developer has committed all breaches alleged by the Society. All such questions remain open.

53. The overall position is that some submissions made by the developer require consideration and may have relevance while deciding the final dispute. MahaRERA stay, parking-related work, statutory permissions and extension granted by the Society are relevant circumstances. However, when these circumstances are considered together with continued disputes, allegation of non-payment of rent, absence of sufficient progress and uncertainty regarding future funding and completion, the balance at the interim stage tilts in favour of allowing the Society to take redevelopment further. The consequence of granting relief sought by the developer is required to be considered. If the Termination Notice is stayed and the Society is restrained from appointing another developer, the redevelopment will remain dependent upon the present developer despite the serious loss of confidence alleged by the Society. This Court cannot ignore the observations in paragraph 38 of the quoted judgment that:

> "The Petitioner - Society is not expected to be at the mercy of the Respondent – Developer."

54. In the present case, the material, prima facie, shows that the relationship between the Society and the developer has reached a stage where there is serious lack of confidence regarding completion of the project. If the parties are compelled to continue working together in such circumstances, it may result in further delay and disputes. For these reasons, I am of the prima facie view that the developer is not entitled to an injunction staying the Termination Notice dated 18 May 2026 or restraining the Society from proceeding with redevelopment through another developer or by any other permissible mode. At the same time, the Society is not entitled to obtain a final declaration under Section 9 that the termination is valid and binding upon the developer. That issue is required to be decided by the Arbitral Tribunal.

55. The interim arrangement should therefore permit the Society to proceed with redevelopment so that the project does not remain stalled for an indefinite period. The claims of the developer arising from the Development Agreement and the alleged wrongful termination shall remain fully open for adjudication in arbitration. The developer shall be entitled to claim damages, compensation or such other relief as may be available to it in law and under the contract. The Society shall ensure that while taking further steps for redevelopment, proper accounts, records, approvals, sanctions, payments and other documents are maintained. The Society shall ensure that no action is taken which may make it impossible for the Arbitral Tribunal to examine and determine the monetary claims of the developer, if any. Both parties shall preserve all original documents, approvals, sanctions, payment receipts and other records relating to the redevelopment project. Neither party shall destroy, alter or misuse any such document. Appropriate arrangement shall be made for handing over or making available necessary documents so that continuation of redevelopment is not obstructed and, at the same time, the material required for arbitration remains preserved.

56. In the result, the Society has made out a prima facie case for protection of the redevelopment process and for taking the redevelopment further, subject to the safeguards indicated above.

57. In view of the findings recorded hereinabove, Arbitration Petition (L) No.25010 of 2026 filed by the Society deserves to be partly allowed. Commercial Arbitration Petition (L) No.23586 of 2026 filed by the developer does not deserve grant of the principal interim reliefs sought therein. The following order is therefore passed:

(i) Arbitration Petition (L) No.25010 of 2026 is partly allowed;

(ii) Commercial Arbitration Petition (L) No.23586 of 2026 is dismissed, subject to the observations and directions contained in this order;

(iii) Pending the arbitral proceedings, it is declared that the Termination Notice dated 18 May 2026 shall remain operative and effective. Consequently, the Respondent-developer shall not, pending the arbitral proceedings and subject to the final award, claim any right to continue or proceed with redevelopment of the Subject Property under the Development Agreement dated 25 November 2023 or the Power of Attorney executed pursuant thereto;

(iv) It is clarified that the finding regarding the validity of the termination is only a prima facie finding for the purpose of deciding the present petitions under Section 9 of the Arbitration and Conciliation Act, 1996. The learned Arbitral Tribunal shall decide all disputes without being influenced by any observation made in this order;

(v) The Respondent-developer, its directors, officers, servants, agents and all persons claiming through or under it are restrained from disturbing or interfering with the Society's peaceful possession and control of the Subject Property;

(vi) The Society shall be entitled to proceed with the redevelopment of the Subject Property, either by self-development or through such other developer, contractor or agency as may be selected by it, subject to compliance with applicable law and obtaining such permissions and approvals as may be required from the competent authorities;

(vii) The Respondent-developer, its directors, officers, servants, agents and all persons claiming through or under it are restrained from obstructing or interfering with the redevelopment activities undertaken by the Society or by any developer, contractor or agency lawfully appointed by the Society;

(viii) The Respondent-developer and all persons claiming through or under it are restrained from selling, transferring, assigning, mortgaging, charging, encumbering, alienating or creating any third-party right, title or interest in respect of the Subject Property or any premises proposed to be constructed thereon;

(ix) The Respondent-developer shall not represent before any person, authority or third party that it continues to possess any subsisting right to independently undertake redevelopment of the Subject Property on the basis of the Development Agreement dated 25 November 2023 or the Power of Attorney;

(x) The Respondent-developer shall, within a period of two weeks from today, hand over to the Society all original documents relating to the Subject Property and the redevelopment project which are in its possession, including, insofar as available with it, the original Development Agreement dated 25 November 2023, the Power of Attorney, approvals, sanctions, payment receipts, NOCs, drawings and other project documents;

(xi) Before handing over the documents, the Respondent-developer shall be entitled to retain copies thereof. The Society shall maintain proper copies and record of all documents received from the Respondent-developer;

(xii) The Respondent-developer shall, within two weeks from today, provide to the Society copies of all approvals, permissions, sanctions, applications, correspondence, NOCs and other documents obtained or generated in connection with the redevelopment project, to the extent the same have not been provided;

(xiii) The Respondent-developer shall provide particulars and copies of communications, if any, received from the project Architect, RCC Consultant, Structural Engineer or any other professional engaged by it in relation to the redevelopment project. The Respondent shall not be required to procure any fresh NOC from such professionals only for the purpose of these proceedings. However, it shall disclose the names and contact particulars of such professionals and provide all documents available with it concerning their engagement and work;

(xiv) The Society shall be entitled to approach the concerned statutory, municipal and registration authorities for recording, giving effect to or acting upon the termination, and for obtaining such permissions, transfers, modifications or fresh approvals as may be permissible in law. The Respondent-developer shall not obstruct such lawful steps;

(xv) In view of the above directions, it is not necessary at this stage to appoint the Court Receiver for taking custody of the documents. The prayer for appointment of Court Receiver is accordingly rejected;

(xvi) The Society's prayer for a final declaration that the Development Agreement and Power of Attorney stand permanently cancelled and revoked is not granted as such. The declaration and consequential directions granted under this order are only for the limited purpose of protecting the Subject Property and enabling the redevelopment process to proceed pending the arbitral adjudication;

(xvii) The prayers of the developer for staying the Termination Notice dated 18 May 2026, restraining the Society from acting upon the termination, maintaining status quo in favour of the developer, preventing the Society from appointing another developer and restraining the Society from proceeding with redevelopment are rejected;

(xviii) The prayer of the developer seeking a direction against the Society to deposit Rs.10 crore as security for the alleged investment of the developer is rejected at this stage. The alleged investment and the monetary consequences arising from termination are matters which can be examined in the arbitral proceedings on the basis of evidence;

(xix) The prayer seeking police protection is rejected. However, all concerned parties shall maintain peace and shall not take law into their own hands. If any obstruction or breach of law and order takes place, the concerned authorities shall deal with the same in accordance with law;

(xx) The Society and the Respondent-developer shall maintain complete accounts and preserve all records relating to the redevelopment project, including payments made towards construction, consultants, statutory authorities, corpus, rent, rehabilitation compensation and other project expenses, for the purpose of the arbitral proceedings;

(xxi) The Society shall be at liberty to appoint another developer or proceed with self-development. However, before creating any third-party rights in respect of the Developer's Area or entering into transactions which may prejudice the developer's claims in arbitration, the Society shall ensure that proper accounts and records are maintained and the transactions are carried out in accordance with law.

The arbitral rights and claims of the Respondent-developer, if established, shall remain subject to the final award;

(xxii) All observations and findings recorded in this order are prima facie and only for deciding the applications for interim measures under Section 9 of the Arbitration and Conciliation Act, 1996. They shall not bind the learned Arbitral Tribunal while deciding the disputes finally on merits;

(xxiii) There shall be no order as to costs.

(xxiv) The interim applications, if any, stand disposed of accordingly.

58. At this stage, Mr. Khan, learned Advocate appearing on behalf of the developer seeks stay of the execution and implementation of this order. For the reasons recorded herein above, the request for stay stands rejected.

(AMIT BORKAR, J.)